

Conversely, claimant contends the issues now raised by respondent and its insurance carrier are not reviewable at this juncture of the proceeding. Therefore, claimant argues that this appeal should be dismissed. In the alternative, claimant argues that the evidence supports Judge Clark's findings and that the September 5, 2000 Order should be affirmed.

The only issues before the Board on this review are:

1. Were claimant's present abdominal problems caused by, or are they directly related to, the accident or injuries that she sustained while working for respondent?
2. Does the Appeals Board have jurisdiction from a preliminary hearing order to reweigh the evidence to determine if a specific medical procedure is reasonable and necessary to cure or relieve a work-related injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The preliminary hearing Order should be affirmed. The Board concludes that claimant's present abdominal problems are related to the series of accidents that she sustained while working for respondent. But the Board concludes that it does not have jurisdiction from a preliminary hearing order to determine whether a specific medical procedure is reasonable and necessary to cure or relieve a work-related injury.
2. This is the second appeal that has been made in this claim. Respondent and its insurance carrier first appealed the April 25, 2000 preliminary hearing Order entered by Judge Clark. In that appeal, the Board affirmed the Judge and held that claimant had proven that she had sustained a work-related accident while working for respondent and that she had proven timely notice.¹
3. Respondent and its insurance carrier now ask the Appeals Board to reweigh the evidence and determine whether claimant's July 14, 2000 abdominal surgery was related to her work-related accident and resulting injuries. In their brief to the Board, respondent and its insurance carrier contend:

... the claimant presented to Dr. Beech on July 6, 2000 with new complaints of pain. Ultimately she underwent surgery on July 14. Consequently, the question of whether claimant met with accidental injury arising out of and in the course of her employment with respondent **such as to necessitate this latest surgery is at the forefront of this appeal.** (Emphasis added.)

¹ See K.S.A. 44-520.

4. The Appeals Board does not have jurisdiction from a preliminary hearing order to reweigh the evidence to determine whether a specific medical procedure is reasonable and necessary to cure or relieve a work-related injury. But the Board has jurisdiction to determine whether a worker's injuries were caused by or are related to an accident that occurred at work.

5. The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact in making preliminary hearing findings is subject to review. Unless an administrative law judge otherwise exceeds his or her jurisdiction, reviews of preliminary hearing orders are limited to the following issues:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?

Whether a specific medical treatment is reasonable and necessary to cure or relieve a work-related injury is not one of the preliminary hearing issues subject to review from a preliminary hearing order. Therefore, to the extent that respondent and its insurance carrier request the Board to determine whether the July 2000 surgery was reasonable and necessary medical treatment, such review must await final award.

6. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim. K.S.A. 1999 Supp. 44-534a provides, in part:

. . . Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.²

7. By Order dated July 10, 2000, the Board found that claimant sustained a series of accidents from November 3, 1998, through January 10, 2000, that caused multiple hernias and injury to claimant's small bowel and intestines. For those injuries claimant underwent surgery in both January and March 2000. In an April 18, 2000 letter, Dr. Randall R. Beech, the surgeon, wrote the following:

² K.S.A. 1999 Supp. 44-534a(a)(2).

For clarification, I would like to make the statement that based on a reasonable degree of medical probability, her [claimant's] employment and requirements of her employment which included lifting and straining because of the weights required in lifting in this area have definitely contributed to her hernia formation and subsequent need for follow[-]up surgery to repair these areas.

8. On July 14, 2000, Dr. Beech performed a third operation on claimant. In a letter dated September 28, 2000, Dr. Beech also relates the necessity for that surgery to the heavy lifting, stooping and bending that claimant performed working for respondent. The doctor wrote, in part:

. . . Mrs. Hicks, as you know, had an incarcerated hernia that presented for initial evaluation on 1-11-00. She subsequently underwent hernia repair and this at the time was a recurrent hernia by definition. Because of the weakness within the fascial tissues, the attempt at a recurrent hernia repair was unsuccessful requiring a second procedure completed on 3-21-00. These were related to her original work setting and episodes of difficulties that she encountered with the type of work that she did including heavy lifting, stooping and bending.

. . .

A third surgery [July 14, 2000] was necessary because of weakened disrupted fascia superior to the previous mesh repair. This again was based on a reasonable degree of medical probability and are related to her previous difficulties and causes of the recurrent hernias. . . .

Based upon Dr. Beech's medical opinion, the Board finds that the medical condition addressed by the July 14, 2000 surgery was directly related to the series of accidents and injuries that claimant sustained while working for respondent. Therefore, claimant is entitled to receive medical treatment for the recurrent hernia that Dr. Beech found and began treating in July 2000.

9. As indicated above, the Workers Compensation Act provides that preliminary hearing issues can be preserved for final award. Should claimant fail to seek a final award, the Act provides that respondent and its insurance carrier may request a final award and final determination of the benefits due in the claim. Thus, contrary to respondent and its insurance carrier's argument, the Act provides an adequate procedure for reviewing hernia-related issues.

Whenever the employer, worker, Kansas workers compensation fund or insurance carrier cannot agree upon the worker's right to compensation under the workers compensation act or upon any issue in regard to workers

compensation benefits due the injured worker thereunder, the **employer, worker, Kansas worker's compensation fund or insurance carrier may apply in writing to the director for a determination of the benefits or compensation due or claimed to be due.** . . .³ (Emphasis added.)

WHEREFORE, the Appeals Board affirms the September 5, 2000 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

c: James S. Oswalt, Hutchinson, KS
Jeffrey A. Chanay, Topeka, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 1999 Supp. 44-534(a).